***THE HON'BLE SRI JUSTICE P.S.NARAYANA**

+ W.P.No.22248 of 2006

%Dated 26-11-2007.

 # Yendrapudi Ramachandra Rao,
S/o. Late Shankaraiah, 76 years,
R/o.Wyra village and Mandal,
Khammam District .. Petitioner

Vs.

$1. The Deputy Secretary,
Freedom Fighters Division,
Ministry of Home Affairs,
Loknayak Bhavan, New Delhi.
2. The Secretary, Revenue (FF) Department,
Govt. of A.P., Secretariat, Hyderabad
3. The District Collector, Khammam District,
Khammam .. Respondents

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>HEAD NOTE:

! Counsel for the Appellants: Mr. K. Chinna Baba

^Counsel for the Respondents: Asst. Solicitor General

? Cases referred:

AIR 2007 S.C.,3014

THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.22248 of 2006

Date: 26th November, 2007

Between :-

Yendrapudi Ramchandra Rao .. Petitioner

And

The Deputy Secretari,
Freedom Fighters Division,
Ministry of Home Affairs,
Loknayak Bhavan, New Delhi
And 2 others .. Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.22248 of 2006

ORDER:-

Heard Sri K.Chinna Baba, the learned Counsel representing the writ petitioner and the Asst. Solicitor General representing respondents.

2. The Writ Petition is filed for a Writ of Mandamus directing the first respondent to sanction freedom fighters pension to the petitioner with all consequential arrears with effect from December, 1986, the date on which he submitted application as per the enquiry reports submitted by the second respondent in L.Dis.No.Ex.C.6(M)1225/93, dt.3-7-1993 with Lr.No.62476/FF-I(A.2)/93-1, dt.31-1-1995

and submitted in Lr.No.Rc.1889/FF-I(A.2)/2003-1, dt.13-3-2003 by quashing the impugned proceedings No.112/95/92-FF(HC), dt.6-12-93 and dt.20-9-2005 of the first respondent by holding that the impugned action of the respondents is illegal, arbitrary and discrimination, being violation of Articles 14 and 21 of the Constitution of India and pass such other suitable orders.

3. It is stated that *the petitioner submitted an application to the first respondent during the month of December, 1986, in prescribed Proforma enclosing Boarder Camp-in-Charge Certificate stating the activities, in which the petitioner participated during the Nizam Liberation Movement for the merger of Hyderabad State into Indian Union during the year 1947-48 and requested for grant of Freedom Fighters Pension under Swatantra Sainik Samman Pension Scheme and that subsequently, he obtained the Criminal Case Index Sheet in C.C.No.3/1/1356F from the District Court, Khammam on 16-3-1991, in which the petitioner had been shown as one of the accused and submitted to the first respondent to consider his application. It is also averred that then the first respondent was pleased to register the petitioner's application as 112/95/92-FF(HC) and addressed a letter to the second respondent to submit verification and entitlement report vide letter dt.02-02-1993 and in turn, the second respondent addressed a letter to the third respondent in Govt.Memo.No.10386/FF.I(A.2)/93, dt.8-4-93 and directed him to submit verification and enquiry*

report and then the third respondent has submitted his verification and entitlement report to the second respondent in L.Dis.No.Ex.C.6(M)1225/93, dt.3-7-93 along with a copy of the report of the Munsif Magistrate, Khammam, Legal representative.No.308, dt.16-6-1993 and in turn, the second has forwarded the report to the first respondent in Lr.No.10386/FF.I(A.2)/93-1, dt.13-8-93. But, erroneously and arbitrarily, the first respondent has rejected his case for grant of freedom fighters pension in Proce.No.11/95/92-FF(HC), dt.6-12-93 stating that the State Government have not recommended the petitioner's case and the documentary evidence produced by the petitioner does not prove his claim of suffering, but, the reasons given by the first respondent is liable to be interdicted for the reason that the State Government will verify the documents and enquire into his claim and submit the verification report. Further it is also averred that in several cases, where, the second respondent has recommended for grant of freedom fighters pension, the first respondent has rejected the cases for grant of freedom fighters pension and that therefore, the recommendation of the second respondent is not at all required. Further it is stated that the second ground taken for rejection is that the documentary evidence, which was submitted by the petitioner, does not prove his claim of suffering, but it is not correct. The petitioner also further stated that the admitted factual fact is that the Nizam Government has filed a Criminal Case against him along with others under Public Security Act of Nizam Sarjar Ali in

C.C.No.3/1/1356F and arrest warrant was issued against him along with the co-accused and the case was pending more than six months before the Court and during that period, he went underground and worked in Jayanti Camp, under the Border Camp-in-Charge Sri Guntupalli Satyanarayana and that therefore, he proved his suffering and hence, the first respondent is bound to sanction the freedom fighters pension to him with all consequential arrears with effect from the date of submission of his application. That apart, the first respondent has sanctioned the freedom fighters pension to several persons, who have submitted similar documentary evidence andthat therefore, the impugned order passed by the first respondent on 6-12-93 is illegal, arbitrary and discrimination being violation of Articles 14 and 21 of the Constitution of India. Further it is stated by the petitioner that the first respondent has subsequently directed the second respondent to furnish the Border Camp-in-Charge Certificates of twelve persons, including himself and accordingly the second respondent has submitted the Camp-in-Charge Certificates in Lr.No.62476/FF-I(A.2)/93-1, dt.31-1-95, in which he was standing at Sl.No.7, but the first respondent has not reconsidered his case. At this juncture, the petitioner filed W.P.No.15696/96 before this Court, which was disposed of on 22-2-96 directing the respondents to reconsider his case by disposing his representation within four weeks. But, the first respondent has not reconsidered the petitioner's case and therefore, the impugned rejection order is liable to be set aside.

Further it is averred that while things stood thus, the first respondent has constituted Hyderabad Special Screening Committee to consider the applications for grant of freedom fighters pension, basing on the Camp-in-Charge certificates, apart from other documentary evidence. Further it is also stated by the petitioner that at that juncture, with a hope that the Committee will consider his case, he filed W.P.No.19240/97, which was disposed of on 30-7-97, directing the first respondent to place his application before the Screening Committee and accordingly, the first respondent was pleased to place his application at Sl.No.7 of the Committee Agenda and the Committee was pleased to recommend his case. Further it is stated by the petitioner that it is clearly shown that the first respondent has not reconsidered his case as directed by this Court in W.P.No.15696/1996on 22-2-96. It is also stated by the petitioner that thereafter, his case was forwarded to the State Government along with all recommended cases for submission of verification of entitlement report with further Affidavits signed by the six months imprisoned freedom fighter and Border Camp-in-Charge and Pension Affidavit attested by the Magistrate and for verification of age etc. The petitioner also further averred that in turn, he attended enquiry and submitted all required documents before the District Revenue Officer, Khammam, who had been appointed as Enquiry Nodal Officer for submission of verification and entitlement report of Committee recommended cases. It is also stated by the petitioner that then the third respondent has submitted

petitioner's verification report to the second respondent, recommending his case for grant of freedom fighters pension, in Lr.No.Rc.Ex.C.6/2217/112/7242/97, in which his name was shown at Sl.No.42 of the enclosed annexure and in turn, the second respondent was recommended and forwarded his case along with others in Lr.No.1889/FF.I/A2/2003-1, dt.13-3-02, but the first respondent has not considered his report. Further it is averred by the petitioner that at this juncture, he submitted representations to the first respondent on 15-8-2003 and 17-1-2004 and thereafter, the first respondent has directed him to submit his serial number and agenda date in Lr.No.112/95/92-FF(HC)(A), dt.27-7-05. Accordingly, the petitioner submitted a Xerox copy of the Agenda List, in which his name was shown a Sl.No.7with File No.112/95/92 with W.P.No.19240/97. But the first respondent had not considered the fact petitioner's case was recommended by the Committee and therefore, his name was included in the recommended list and the same list was forwarded to the second and third respondents for submission of verification and entitlement reports. But erroneously, the first respondent has passed the impugned order No.112/95/92-FF(HC), dt.20-9-2005 rejecting petitioner's case for grant of freedom fighters pension stating that his case was not recommended by the Hyderabad Special Screening Committee, which is illegal, arbitrary and violation of Articles 14 and 21 of the Constitution of India. Further it is averred by the petitioner that as per the Agenda, his application was placed before

the Screening Committee and the Committee was considered the same. It is further stated by the petitioner that if the Committee has rejected his application, the rejection slip of the Committee will be enclosed to his file with reasons, under what circumstances, the Committee rejected his case. That apart, in the same filed, the enquiry report submitted earlier by the respondents 2 and 3 basing on the official documentary evidence, have also been enclosed and that report have to be considered by the respondents independently, as the documentary evidence cases will not be placed before the Committee, except the cases submitted basing on the Camp-in-charge Certificate without any documentary evidence. Therefore, the impugned rejection orders are vitiated in the eye of law and thereby the same are liable to be set aside with a declaration that the petitioner entitled for freedom fighters pension on part with other similarly situated persons with all consequential arrears, with effect from the date on which the second respondent has submitted his earlier enquiry report on 31-1-95. Further it is stated that the first respondent has not applied his mind in considering petitioner's case and therefore, the impugned rejection order is vitiated in the eye of law. The petitioner also further averred that if his original filed is called for, the fact that whether the respondents have reconsidered his case as directed by this Court and what was stated by the Hyderabad Special Screening Committee will be known and that therefore, the original file No.11/95/92-FF(HC), may be called for in the interest

of justice. In such circumstances, the writ petitioner approached this Court.

4. The Counsel representing the parties had pointed out to the different proceedings and also would maintain that in the facts and circumstances of the case, the action cannot be sustained and the petitioner to be granted Freedom Fighters Pension under Swatantra Sainik Samman Pension Scheme. I n ***UNION OF INDIA v. M.S.MOHAMMED RAWTHER***[1] the Apex Court observed at para 6 as hereunder:-

> *"We have heard learned Counsel for the parties and perused the record. We are of the opinion that the course adopted by the learned Single Judge was the correct course and the matter should have been remitted back to the Union of India to decide the question of grant of freedom fighter's pension afresh. It required necessary investigation of facts as to whether the incumbent was entitled to SSS pension or not. The Courts cannot encroach into the executive or legislative domain, and cannot assume the role of investigation of facts. It is the duty of the State and the Union of India to have considered all the material on the subject and consider whether it is a case worth granting pension as per the SSS Pension Scheme, 1980. The Court has only judicial power to review that executive order on Wednesbury principles, but it cannot arrogate to itself the power of the executive. If the order passed by the Union of India is not justifiable on Wednesbury principles the Court*

can only set it aside and remit the matter back to the executive for a fresh decision, but the Court cannot assume the power of the Union of India. The Court must exercise judicial restraint in such matters. There is broad separation of powers under the Constitution, and one organ of the State should not ordinarily encroach into the domain of another. Montesquieu's theory broadly applies in India too."

5. In the light of the facts and circumstances well explained in the affidavit filed in support of the Writ Petition and also the proceedings placed before this Court, the action of the first respondent being totally unsustainable, the impugned orders are hereby set aside and the matter is remitted to the first respondent to reconsider the whole issue in the light of the specific stand taken by the petitioner and take an appropriate decision in this regard within a period of six weeks from the date of receipt of a copy of this order.

6. The Writ Petition is allowed to the extent indicated above. No order as to costs.

Justice P.S.Narayana

26th November, 2007
Note: C.C. by tomorrow.
(B/o.smr)

[1] AIR 2007 S.C., 3014